

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.439 of 2017

(Against the judgment of conviction, dated 17.11.2016, and order of sentence, dated 29.11.2016, passed by Shri Shashi Bhushan Prasad Singh, learned 1st Additional Sessions Judge- cum -Special Judge, Nalanda at Bihar Sharif in S.T. No. 562 of 2014, arising out of Karai-Parsuarai P.S. Case No. 42 of 2014)

=====

Nandu Thakur @ Nanhu Thakur, Son of Late Kesho Thakur, Resident of Village- Chandrapura, Karai Parusarai, Police Station- Karai Parusarai, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mrs. Rashmi Kinjalk, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 09-09-2017

The instant Cr. Appeal has been filed by the appellant against the judgment of conviction dated 17.11.2016, and order of sentence, dated 29.11.2016, passed by learned 1st Additional Sessions Judge- cum -Special Judge, Nalanda at Bihar Sharif in S.T. No. 562 of 2014, arising out of Karai-Parsuarai P.S. Case No. 42 of 2014, whereby the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced imprisonment for life and a fine of Rs.5,000/- and in default of payment further simple imprisonment for three months.

2. The prosecution case, as per fardbeyan dated 13.04.2014 lodged by the widow of the deceased Isranand Paswan,



namely, Geeta Devi, is that while she was going to maize field, she saw Nanhku Thakur was shaving her husband. When she moved towards her husband, Nanhku Thakur has cut the neck of her husband and the Indu Devi, wife of Nanhku Thakur, Niranjana Thakur son of Nanhku Thakur, Fekan Thakur, brother of Nanhku Thakur, Hira Devi, wife of Fekan Thakur and Uday Thakur have extended help in committing murder of her husband, as they caught hold of the hands and legs of her late husband.

3. On the basis of the fardbeyan of the informant Karai Parsurai P.S. case no. 42 of 2014 was registered for the offence under Sections 302/34 of the Indian Penal Code and Section 3 (2) (v) of the SC/ST Act.

4. The police after investigation submitted charge-sheet against the sole accused-appellant Nanhku Thakur for the offence under Sections 302 of the Indian Penal Code and Section 3 (2) (v) of the SC/ST Act for committing murder of Isranand Paswan and others named in the F.I.R. were not charge-sheeted.

5. On receipt of the charge-sheet, learned Magistrate took cognizance of offence and committed the case to the Court of Sessions for trial.

6. The appellant pleaded not guilty and as such he



was tried in the instant case.

7. During the course of trial, the prosecution has examined altogether 10 witnesses. P.W.1 is Denesh Paswan, P.W.2 is Geeta Devi (informant of the case), P.W. 3 is Brahm Paswan, P.W. 4 is Mangal Jamadar, P.W.5 is Bindeshwar Manjhi, P.W.6 is Ajay Sahnkar Kumar (1st investigating officer of the case), P.W.7 is Jay Jamadar, P.W.8 is Raj Kumar Paswan (2nd investigating officer of the case), P.W. 9 is Nageshwar Paswan and P.W.10 is Dr. Manoj Kumar, who conducted post-mortem on the dead body of the deceased.

8. In this case investigation was done by the two investigating officers and they have been examined as P.W.6 and P.W.8. P.W.1 is a villager, who deposed that he assembled at the place of occurrence on hearing halla about the death of the deceased Isranand Paswan. P.W.2 is the informant of the case. She in her cross-examination has admitted that at the time of occurrence she was in the Maize field and she was informed by Nanhku Thakur (appellant) that her husband has fallen flat. In para 5 she said that she reached the place of occurrence after 10 minutes of hearing halla. She admitted that she has not gone to search her husband and she learnt from the villagers that the dead body of her husband is lying. In para 7 she has admitted that she has not made any statement to the police. She was called by the Sub-inspector at the police station and she does



not recall whether any enquiry was made by the police from her or not and the Sub-inspector of police obtained her thumb impression on the paper and since she is illiterate and as such she is not aware of the contents of the paper on which her thumb impression was obtained.

9. P.W.3 is the another villager, who in his cross-examination has admitted that he reached at the place of occurrence after 10-20 minutes after hearing halla, where he saw that 300 peoples assembled and after half an hour of his reaching, the police reached the place of occurrence.

10. P.W.4 was turned hostile. He has pleaded total ignorance about the occurrence.

11. P.W.5 also stated that he is ignorant about the incident, as he was not present in the village on the date of occurrence.

12. P.W.6, the 1st investigating officer of the instant case has deposed that he has prepared the inquest report and sent the dead body for post-mortem. In his cross-examination he stated that he reached the place of occurrence after 15 minutes of receiving information. He accepted that out of 80-100 people assembled there, only three people agreed to make statement and their statements were recorded.



13. P.W. 7 was declared hostile, as P.W. 7 has expressed total ignorance about the incident.

14. P.W. 8 is the 2nd investigating officer, who conducted the subsequent investigation of the case after P.W.6. In his cross-examination he stated that he has not visited the place of occurrence after joining as investigating officer. He also admitted that he has not made any attempt to seize the razor allegedly used for murdering the deceased Isranand Paswan. He stated that he has recorded the statement of independent witnesses at his residence.

15. P.W.9 was also declared hostile. He pleaded ignorance about the incident, as he was not present on the date of occurrence in the village.

16. P.W. 10 is the Dr. Manoj Kumar, who has done post-mortem examination. In his cross-examination, he has admitted that injury was caused by knife sword or by razor.

17. The appellant in his statement under Section 313 of the Cr.P.C. pleaded total innocence and denied the charge of committing murder of Isranand by cutting his neck while shaving beard of the deceased Isranand Paswan.

18. Learned 1st Additional Sessions Judge-cum Special Judge, Nalanda at Bihar Sharif on the basis of the aforesaid



materials arrived at a conclusion that the prosecution has been able to bring home the charges and accordingly he convicted the appellant and sentenced to undergo imprisonment for life and a fine of Rs. Rs.5,000/- for the offence under Section 302 of the Indian Penal Code and in default of payment further simple imprisonment for three months.

19. Learned counsel appearing on behalf of the appellant has submitted that there is no eye witness to the incident. The allegation levelled by the informant forming basis of the F.I.R. was against six persons. The fardbeyan indicates that this appellant with the help of other members of the family has committed murder of the husband of the informant, but only appellant was sole accused this fact falsifies the basic care of prosecution as per fardbeyan. Moreover, the informant in her cross-examination, in the trial, has made contradictory statement about the manner of occurrence. The cross-examination indicate that she has not seen the occurrence and the fardbeyan on which she has put her thumb impression was not recorded on the basis of her statement, but she has put her thumb impression on the written paper at the instance of the Sub-inspector of police. The other witness, namely, P.W.3, the brother of the deceased in his cross-examination has admitted that he reached the place of occurrence after 10-20 minutes of hearing halla. The witnesses,



P.W.4, P.W.5 and P.W.7 have admitted in their cross-examination that they are ignorant about the manner of occurrence and they have been declared hostile. The opinion of the doctor as to the weapon used for commission of murder also creates doubt, as the doctor has opined that such type of injuries may be caused by knife, sword or by razor and as such there is no definite opinion as to the weapon used for murder. From the deposition of witnesses, there is no motive forthcoming for committing murder of Isranand by this appellant. The depositions of P.W. 2 (informant of this case) and P.W. 3 (the brother of deceased) also make the case of the prosecution doubtful. The opinion of the doctor that such injury can be caused due to knife, sword or by razor also creates serious doubt. In the instant case no step was taken by the police for seizure of the alleged razor used for committing the murder of the deceased. It appears that the police has completed perfunctory investigation in the case and in a situation when there is no eye witness to the incident and there is definite opinion of the doctor about the weapon used for committing murder of the deceased and there is absolutely no motive behind killing the deceased, coupled with the fact that in the F.I.R. six persons were named, however, only this appellant was charge-sheeted and subjected to trial renders the prosecution case under serious cloud.

20. In the totality of the facts situation, we are of the



considered view that the prosecution has not been able to bring home the charge beyond all reasonable doubt. The deposition of the informant has rendered the case most improbable and non-seizure of the alleged weapon used for cutting the neck of the deceased and lack of definite opinion as to the use of weapon in commission of murder and lack of any motive in commission of murder in the instant case, makes the prosecution case of commission of offence by the present appellant under serious doubt and on consideration of entire materials on record, we are of the considered view that on the basis of materials available in the trial one cannot safely come to the conclusion that the appellant has committed the murder of the deceased and as such we are inclined to allow this appeal and set aside the impugned judgment of conviction and sentence passed by the trial court.

21. Accordingly, the appeal is allowed. As the appellant is in custody, he is directed to be released forth with, if not wanted in any other case.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
Transmission Date	15.09.2017

